IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.3134 OF 2006

Mrs Sakhubai Shivram Koli ...Appellant

Versus

Municipal Corporation of Gr. Bombay & Anr. ...Respondents

Shri Vivek Salunkhe i/by Shri P.B.Shah for the Appellant.
Shri J.J.Xavier for the Respondent No.1.

CORAM : ABHAY S.OKA, J.
DATED : MARCH 07, 2007.

P.C.:

1. I have heard the Advocates appearing for the parties. I have perused the compilation containing the pleadings, notes of evidence and other relevant documents on the record of the trial Court. According to the case of the Appellant-Plaintiff, she is the legal heir and representative of late Pawsha Koli, the original owner of the suit property. The suit property is the land bearing Survey No.33, Hissa No.13 corresponding to C.T.S No.853 admeasuring 3234 sq meter at village Kandivali, Taluka Borivali. In the suit, a declaration is claimed that the lease executed by the first Respondent-Corporation in respect of the suit property in favour of the second Respondent was bad in law and null and void. The Appellant claimed to be in possession of the property and therefore prayer for

injunction restraining the Respondent from disturbing alleged possession of the Appellant has been incorporated in the plaint. The suit was contested by the second Respondent. The contention raised by the second Respondent was that the suit property was acquired under the provisions of the Land Acquisition Act, 1894 and an Award under section 11 of the said Act of 1894 was made on 12th November, 1964. It is contented that possession of the said land was taken over by the State which was handed over to the first Respondent Corporation and later on the first Respondent has put the second Respondent in possession of the suit property. The trial Court dismissed the suit by holding that the Appellant had no title and that the Appellant has failed to prove that he was in possession of the suit property on the date of institution of the suit.

2. Shri Shah appearing for the Appellant submitted that there is evidence on record to show that the Appellant is the legal representative of the original owner. He placed reliance on the documents annexed to Application for additional evidence being Civil Application No.1040 of 2007. He submitted that the first Respondent did not contest the suit by filing written statement and there is enough material on record to show that the transaction/transfer made by the first

Respondent in favour of the second Respondent is completely illegal. He submitted that the suit was filed by the Appellant to bring to the notice of the court the illegality committed by the first Respondent while allotting the suit property to the second Respondent.

3. I have considered the submissions. In the suit the Appellant has contented that she is in possession and therefore, a decree for perpetual injunction for protecting the possession has been claimed. The exhibited documents on record shows that the suit property was acquired for the benefit of the first Respondent and an Award has been made on 12th November, 1964 under section 11 of the said Act of 1894. The document at Exhibit 28 discloses that the alleged predecessor of the Appellant the said Pawsha Koli handed over possession of the property to a surveyor on behalf of the Special Land Acquisition Officer. Thus, the evidence on record shows that after completing the acquisition proceedings, the possession of the suit property was handed over under section 16 of the said Act of 1894. Thus, the predecessor of the Appellant was divested of all his right, title and interest in the suit property.

4. The claim made by the Appellant is that she is in possession of the suit property. In her cross-examination, the Appellant admitted that she has not visited the suit property since 15 years. When a suggestion was put to her that said Pawsha Koli handed over possession of the suit property, she did not deny the said suggestion, but, she pleaded ignorance about it. She admitted that she was aware that work of construction as per plan sanctioned by the first Defendant was going in the suit property. The cross examination of the Appellant itself shows that the Appellant was not in possession of the suit property on the date of institution of the suit. As stated earlier, the predecessor of the Appellant lost his right, title and interest in the suit property as a result of acquisition and as a result of taking over possession of the suit property under section 16 of the said Act of 1894. The suit proceeds on the footing that the Appellant is in possession. The finding of the trial Court that the Appellant is not in possession is fully supported by the evidence on record and especially the statements made in the cross examination by the Appellant herself.

5. There is no merit in the Appeal and the same is dismissed.

JUDGE